

**Summary of comments from the MCA and APAAC**

1. Comment from MCA re: Rule 122(d)(2)(A)

**MCA:** *In many instances, law enforcement officers will be covered by the “witness” provisions of proposed Rule 122(d)(2)(B), but in some cases the State’s case agent may be a law enforcement officer who investigated the case, is in trial every day, but is not called to testify at trial. The court should have the ability to protect this type of non-testifying officer under the proposed rule. Also, the proposed rule for criminal cases specifically permits the defendant or a victim to make a limiting request, but does not specifically give the State the same ability.*

MCA’s suggested change:

(A) In a criminal proceeding, a judge on his or her own motion or upon the request of a defendant, THE STATE, or a victim may order that no one may photograph, record, or broadcast THE PROSECUTOR, A DESIGNATED LAW ENFORCEMENT OFFICER, the defendant, or the victim in the courtroom.

**Staff’s recommendation:** The rule envisions that the defense could move to preclude coverage of a defendant, but could not limit coverage of defendant’s counsel. Accordingly, staff modified the MCA’s suggestion so that a prosecutor could preclude coverage of a non-testifying law enforcement officer, but not coverage of the prosecutor. Staff believes “designated” is unnecessary and omitted this word. Staff changed the article “the” to “a” in this provision.

(A) In a criminal proceeding, a judge on his or her own motion or upon ~~the~~ request of a defendant, a prosecutor, or a victim may order that no one may photograph, record, or broadcast ~~the~~ a defendant, a law enforcement officer, or ~~the~~ a victim in the courtroom.

2. Comment from MCA re: Rule 122(d)(2)(B)

**MCA:** *This suggestion corrects an apparent oversight in the amended proposal because “victim” is specifically listed with “party” and “witness” in the other parts of this rule, but is omitted from the audio coverage portion of the rule. Certainly a testifying victim would be a witness and thus should fall under the rule, but the omission of “victim” from that portion of the rule may be construed to create a distinction that omits victims. For clarity and consistency, “victim” should be added to this last sentence.*

MCA’s suggested change:

(B) A judge on his or her own motion or upon the request of a party, victim, or witness, may order that video coverage must effectively obscure the face and identity of that party, victim, or witness or that there be only audio coverage of the testimony of a party, VICTIM, or witness.

**Staff’s recommendation:** Staff agrees with MCA’s suggested language. There may be circumstances where a victim does not “testify,” but does make an unsworn statement to the court, e.g., at a sentencing hearing, and the change will help to clarify this provision.

(B) A judge on his or her own motion or upon the request of a party, victim, or witness, may order that video coverage must effectively obscure the face and identity of that party, victim, or witness or that there be only audio coverage of the testimony of a party, victim, or witness.

3. Comment from APAAC re: Rule 122(c)(5)

Staff's note: This provision provides in part: "A victim or a witness may object to coverage at any time."

**APAAC:** *Does the victim have the right to object to coverage in general or only to coverage of the victim's testimony? Under this proposal, does the victim have the right to object to a request for coverage similar to the right of "parties"? Do victims who will not be testifying similarly have a right to object to coverage? While APAAC takes no position on these questions, it should be noted that the language in proposed Rule 122(c)(5) is ambiguous and can be read to suggest that victims do have the right to object generally.*

**Staff's recommendation:** The rule allows a victim a right to object to coverage, whether the victim is a witness or a spectator. Staff believes that the committee's intent concerning this provision was to allow a victim to object to camera coverage of the victim, rather than to the proceeding as a whole. However, as noted by APAAC, a judge could construe the rule to allow the victim to object to coverage of the entire proceeding. If this is not the desired construction, staff would recommend this change:

"A victim or witness may object to coverage of his or her appearance or testimony at any time."

Otherwise, the provision should stand without changes. Therefore, a judge could interpret the rule to allow, for example, a rape victim to object to coverage of the entire trial.

4. Comment from APAAC re: Rule 122(c)(5)

**APAAC:** *APAAC objects to the specific requirement that the "victim advocate" in the prosecutor's office provide notification to a victim because it is unnecessarily if unintentionally "micro-manages" who in the prosecutor's office will provide the notification. APAAC requests that the language be changed to read:*

A victim's attorney, the prosecutor's office, as well as anyone who calls a witness to testify, has a responsibility to notify that victim or witness of coverage, and his or her right to object, prior to the victim's appearance or the witness's testimony at the proceeding.

**Staff's recommendation:** Staff agrees with the recommendation and APAAC's suggested change. See the next comment for suggested text of this provision.

5. Comment from APAAC re: Rule 122(c)(5)

**APAAC:** *APAAC is concerned that this proposed language overlooks the rights of non-testifying victims. Assuming that the intent of the rule is to allow victims to object generally to coverage, the notification portion of the rule should be changed to read:*

A victim's attorney, the prosecutor's office, as well as anyone who calls a witness to testify, has a responsibility to notify all victims or witnesses of coverage, and his or her right to object, prior to the victim's appearance or the witness's testimony at the proceeding.

**Staff's recommendation:** Staff agrees with the recommendation, but with modified text. The text modification clarifies that the defense counsel (or a self-represented defendant) has no obligation to notify prosecution witnesses or victims of their right to object, and that a prosecutor has no corresponding obligation to advise defense witnesses of this right.

*(5) Time for a victim or witness to object to a request:* A victim or a witness may object to coverage at any time. ~~A victim's attorney, a prosecutor's victim advocate, as well as anyone who calls a witness to testify, Unless a victim's attorney provide notice of this right of this right to the victim of this right, the prosecutor's office has a responsibility to notify that is responsible for notifying victims, or and the prosecutor's witnesses, of coverage, and his or her their right to object to coverage, prior to the victims' appearances or the witnesses' testimony at the proceeding. Anyone else who calls a witness to testify is responsible for notifying their witness of coverage, and the witness' right to object to coverage, prior to the witness' testimony.~~

Clean version of the above:

*(5) Time for a victim or witness to object to a request:* A victim or a witness may object to coverage at any time. Unless a victim's attorney provides notice of this right to the victim, the prosecutor's office is responsible for notifying victims, and the prosecutor's witnesses, of coverage, and their right to object to coverage, prior to the victims' appearances or the witnesses' testimony at the proceeding. Anyone else who calls a witness to testify is responsible for notifying their witnesses of coverage, and the witness' right to object to coverage, prior to the witness' testimony.